

UPPER CLARK FORK STEERING COMMITTEE

MINUTES – September 22, 2000

MEMBERS PRESENT:

Gerald Mueller	<i>Facilitator</i>	Jim Dinsmore	<i>Granite C.D.</i>
Bob Benson	<i>C.F. Pend Oreille Coalition</i>	Ole Ueland	<i>Mile High C.D.</i>
Brent Mannix	<i>N. Powell C.D.</i>	Kathleen Williams	<i>FWP</i>
John Vanisko	<i>Deer Lodge Valley C.D.</i>	Jim Quigley	<i>Little Blackfoot</i>
Gary Ingman	<i>MT DEQ</i>	Bob Bushnell	<i>Lewis & Clark C.D.</i>
Holly Franz	<i>PP&L Montana LLC</i>	Eugene Manley	<i>F.C. & MWRA</i>
Jules Waber	<i>Powell County</i>	Robin Bullock	<i>ARCO</i>

MEMBERS ABSENT:

Mike Griffith	<i>Lewis & Clark Co.</i>	Martha McClain	<i>Missoula C.D.</i>
Michael Kennedy	<i>Missoula County</i>	John Sesso	<i>Butte-Silver Bow</i>
Audrey Aspholm	<i>Anaconda/Deer Lodge County</i>		

VISITORS PRESENT:

Steve Fry	<i>Avista Corp.</i>	Pat MacDonald	<i>Granite Co. Water Users</i>
Mike McLane	<i>DNRC</i>	Curt Martin	<i>DNRC</i>
Devri Roubidoux	<i>DNRC</i>	Anita Arends	<i>NPS/Grant Kohrs Ranch</i>
Sandy Stach	<i>ARCO</i>	Candy West	<i>NRD</i>
Eric Reiland	<i>MFWP</i>	Bruce Farling	<i>MT Trout Unlimited</i>
George Reistad	<i>Deer Lodge Valley</i>	Carol Fox	<i>NRDP-Helena</i>

The Upper Clark Fork River Basin Steering Committee met Friday, September 22, 2000, in St. Mary's Center, Deer Lodge, MT.

WELCOME:

Gerald Mueller welcomed Committee members and visitors and called the meeting to order. The agenda for the meeting was as follows:

1. State-Avista Negotiations
2. Governor's Drought Emergency Plan
3. Georgetown Lake Water Rights Change
4. ARCO Pilot Program for Warm Springs Creek
5. Deerlodge Sewage Treatment Plant Effluent
6. Augmentation Proposal

ANNOUNCEMENTS:

No announcements were made at this time.

State Avista Negotiations:

Gerald Mueller passed out a copy of the letter from Governor Racicot about State-Avista negotiations. Last spring it was reported that because of the action in licensing Avista's two dams on the Clark Fork near the border of Montana, the governor was thinking about pending ongoing negotiations between the state and Avista over Avista's water rights. The entire Clark Fork basin was closed to new water rights by the previous session of legislature, for the purpose of these negotiations to happen. The Federal Energy Regulatory Committee declined acceptance of a negotiated water protection agreement. As a result, the state ceased active negotiations. The Steering Committee requested that a letter be drafted by Holly saying it wasn't a good idea to stop these negotiations because of the significance of Avista's water right to junior water rights holders in the basin. The governor wrote back and stated that the license was issued and they do not have and means or reason anymore to continue the negotiations. Basically the letter said it is a good idea to have the basin closed but now the state will not be involved in the process. If something needs to be done, it should now be at a local level. This was not the outcome we were hoping for.

Steve - After the license was issued and there were no conditions in the license about the water rights or the basin closure, it would have been uncomfortable for federal agency to be involved with this state rights issue. The fact that the state called off negotiations was a real surprise and a real disappointment. Everyone who involved in the negotiations felt comfortable, especially after the license was renewed early. It is however, understood how this should be resolved at a local level with more public involvement to push the issue and we are willing to help with this process.

Jim - Last negotiation session wasn't a negotiation session; it was confusing and frustrating. Everyone was there to negotiate and we weren't allowed to do it. Jim has replied to the governor's letter but has not received any response back yet. Jim doesn't understand what happened and feels that everyone should feel disappointed, especially junior water rights holders.

Mike - When talking to Don MacIntyre, Don expressed that the state felt uncomfortable negotiating after FERCS decision. We had moved out off a position where the state had the legal responsibility to protect public interest, collectively protecting people's rights. Now negotiations would move into a forum where we were negotiating individual rights without the legal authority to do so. Don thinks there should still be discussion of what the long-term management options are, but discussion cannot be in the forum we were in because the State can no longer negotiate for the people. We need to move into a state forum that becomes more collaborative. Mike met with the Flathead conservation district. They have discussed doing some report back. The people are interested in this as a long-term issue, but not interested in maintaining the temporary basin closure. Mike has been asked to work with them to build some public reporting and scoping meetings. Mike hopes that we can do a report back and use it as an opportunity to talk with the public to move this into a more public process.

Gerald - wonders who is going to convene over this. Gerald thinks there could be a conflict over junior water rights and Avista's rights - because everyone's water rights are tied together.

Jim - Expressed frustration...

Gerald - Does Avista have any suggestions about what they want to happen next?

Steve - Avista's role is to participate at a local level. Avista hopes that there will be some sort of push to extend the temporary closure in hopes of forming an overall closure. Steve thinks that Avista is not interested in taking the lead on this, because he does not feel they are in a leadership position. They want to keep it more localized.

Brent - Asked Steve why they wouldn't take a leadership role?

Steve - because they do not want a corporation to come in and take a leadership role, this is more of a public trust issue. If the water basin is closed, the problem gets better. Once the closure is done, the department will start issuing new water permits and there will be depletion of water.

Gerald - there is a problem and we did have a willing partner to sit down with, then they pulled away. It is now up to water users and the Clark Fork Steering Committee and other groups to help. Where do we go from here? Asked Mike what the state meant when they wrote the letter? Will they still help?

Mike - Mike feels there has to be some mechanism to bring folks together. It seems that one of the roles the government could have in this would be to convene some sort of a report back and future development. Mike isn't sure that some basin residents want that feed back.

Gerald - Would you folks convene over this matter?

Holly - It would be a different roll for the organization, but we are up for discussion.

Gerald - If the state agency wouldn't do it, then the committee would be willing to convene.

Holly - the current temporary closure expires February 28. The DNRC felt this was a good date because they felt the negotiations would take two years, and a report back could be made.

Gerald - Do we want to take any action? We could write a letter to the DNRC or Montana Water Resources Association encouraging them to act as a convener so people could discuss this topic.

Brent - thinks it would benefit everyone to continue the closure.

Gary - Is there a way we can poll water users to see if there is interest to continue temporary closure and negotiations, then we can go to the state with this?

Gerald - We could send a delegation from this group to the governor's office to talk about this issue. Avista would be willing to participate and Gerald is willing to be the facilitator. Jim, Holly, Steve, Brent and Eugene will be involved with the correspondence with the Governor.

GOVERNOR'S EMERGENCY DROUGHT ORDER:

Kathleen - Discussed Executive Order 24 and drought related activities in the basin. Passed out some handouts showing how dry the Upper Clark Fork basin

was this summer. It was one of the driest this summer. This information can be obtained on the drought website. Some of the things worked on this summer were:

Helping the fish biologist to prepare for these dry conditions.

Jefferson drought plan (handed out).

An emergency low-flow plan on the Blackfoot - water users committed to conserve on water.

A letter was sent out to major water users in the Upper Clark Fork Basin by the drought advisory committee encouraging them to be conservative with water.

A call for water was made on the Smith, the Blackfoot, the Yellowstone and the Tobacco Rivers. Most people cooperated and the effort was successful.

The Montana Watershed Coordinating Council has an upcoming meeting on November 2 in Helena.

The five watersheds present will be the Big Hole, Jefferson, Blackfoot, Mussellshell and the Shields.

Gary - What is being done to document the benefits and hardships of the call letters?

Kathleen - One of the primary goals is to promote this, but it is hard to quantify what the effects are. This is also a lot of work to maintain and take a lot of time. One reason of the Watershed Council meeting is discuss the effects in each watershed.

Holly talked about the two things that make these efforts work - 1. When fishing is cut back on, it makes the irrigator feel like a collective effort is being made, 2. FWP looking at there expectations and what they can actually accomplish realistically.

Kathleen moved on to the Executive Order. Kathleen explained how the Order takes the 1995 statue and temporarily removes the process DNRC goes through to get a temporary change authorization, basically an automatic conversion. No one has used it to this point, but she would like to see it promoted.

Eugene - Can see problems and fighting in the future over this order between water rights holders. Jim agreed with Eugene and discussed how hard it would be to enforce the order.

GEORGETOWN LAKE:

In early June, Mike was notified that someone was discharging more water out of Georgetown Lake than the decree allowed (30cfs). Mike felt the new owner of the dam, Granite County, needed a change application because their water right was for hydropower and they do not have a license for hydropower, nor is there an operating hydropower system. On June 23rd, Mike wrote Granite County a letter notifying them that they needed to file the change application. Granite County continued to operate as they were. Several public meetings were held to determine what level of flow is appropriate out of the lake. Granite County was asked to cease and assist their discharges and sit down with homeowners to determine what would get lake levels back to normal levels. An operating plan was laid out that identified a working committee that will be in

place until the 31st of May 2001. This plan reduces Granite County's discharge from over 30cfs to around 14cfs and maintains those levels until May 31st. The agreement calls for a council that will act as an advisory council to the county. An application for change has been filed with DNRC from the County. Mike feels that the application is large enough that it falls into the "public interest" section of statutory criteria for change. An EA and possibly an EIS will be needed, but Mike fears the DNRC may not be able to complete this process by next May. Things will not be resolved by next irrigation season. Further discussion was made about the storage rights.

Curt explained the application process and what information will be needed to complete the application and make it correct. Curt has met with one of the commissioners of Granite County and it has been determined that they will need professional help, because it is a very involved process. The impacts on fisheries and the environment are important elements because the application can be denied if it is not in their best interests. This will be a very involved process because of the amount of litigation. Some suggestions to get this going are through local groups, watershed planning groups or the change process.

Holly - what elements of the water right are included in the application for change?

Curt - Two storage rights and one for the 30 cfs that ran through the power plant. They have applied to change all three rights and add the additional purpose for irrigation, but they do not want to give up the hydropower aspect. An ES will need to be gone through before it is determined if an EIS is needed. All of this will be done before the case goes to public notice.

Holly - Is the lake level down?

Jim - The lake level is down about 1.9 feet below normal level.

ARCO's Pilot Program form Warm Springs Creek

Robin Bullock handed out a data report on the pilot study. Robin talked about the water coming out of the Silver Lake System. There are a couple of different flow rights - direct flow rights that ARCO, Butte-Silver Bow and different irrigators have on the creek. There are storage water rights for which we can request stored water from Butte-Silver Bow. When we saw water was getting below the monitoring target of 40cfs, around July 4th, we turned the pumps on at 20cfs. By monitoring gauging systems daily, we were able to determine who was taking what. Additional temperature probes we added and red counts were checked. Data is also available on the toxicity of the water.

Sandy - After three years of this pilot program, we are ready to get this program past the pilot phase and start some serious discussion.

Gerald - Offered the steering committee's help to move things along with the pilot program.

Phase II of Drought Planning

Gerald - Dennis Workman was hired as part of the ground water study to refine the list of dewatered streams from the water management plan. Dennis went through the list with FWP and local irrigators and identified the amount and

the frequency of the dewatering and the significance of the dewatering to the fisheries. As a result, five target reaches were identified as high priority. The reaches selected for detailed planning would be three of the following five:
Clark Fork River - Perkins Lane to Westside Ditch
Clark Fork River - Westside Ditch to Sager Lane
Clark Fork River - Sager Lane to mouth of the Little Blackfoot River
Warm Springs Creek - mouth to Gardiner Ditch headgate
Racetrack Creek - Interstate 90 to 0.5 miles above the Yellowstone Trail Road

Dennis will be paid from a watershed assistance group grant to see if any voluntary arrangement could be made with the people who own the water rights from these dewater stream segments that will allow some water to be put back. The first thing Dennis will do is figure out the point of diversions for irrigation which relate to the dewatered stream segments. Next he will determine how the water is managed in these reaches. Finally he will develop a plan for approaching the water right owners to see if we can get more water in the dewatered reaches. This plan will be voluntary. Three of the five reaches will be chosen by Dennis to work on, based on his evaluation of each reach. We hope to have all of this done by April 2000, but the contract states that it is possible that the goal may not be reached and people may not volunteer. Mike suggested that the Bureau of Reclamation could offer some technical assistance.

Deerlodge Sewage Treatment Plant Effluent:

Anita Arends, Chief of Resource Management for the Grant Kohrs Ranch Natural Historic Site gave a report on the sewage treatment plant effluent and brief history of the Grant Kohrs ranch through a slide show. Anita reported that the project was running very well and was a great success. She hopes that they will find sufficient funds and support to continue the project in the future.

Augmentation Proposal:

Holly helped draft an amendment through the legislature which was designed so you could still get a groundwater permit if you were using ground water, but if it impacted surface flows, you would have to augment those flows, possibly through the use of a surface water right. The statute provides that the department can issue a permit to appropriate groundwater even if it is connected to the surface water if the applicant provides an augmentation plan. The plan must provide sufficient augmentation water in *amount, time* and *location* to replace the depletion to the senior water right.

Jim - Drew a map of Flint Creek representing a proposed wetland for an area of wetland lost in highway construction. He discussed how the property is set up and what the proposed wetland area will be. Jim feels there are three problems with the proposal 1) the ditch they plan to leave the water in is a high-loss ditch (basically it is a swamp), 2) if the water is no longer being diverted, the three other ditches have to absorb all of the ditch loss and 3) there is a considerable amount of surface water that does not go back into Flint Creek but leaves the site and goes into other diversions. If something isn't done about this diversion,

the water has no protection. There is some objection to the augmentation because it seems to cause more problems than it fixes.

Mike - Feels that the augmentation plan presented by Peterson (holds the water right) is missing the key elements that Holly talked about - amount, time and location.

Further discussion was made about the Peterson right and the augmentation proposal for this particular right. The overall feeling is that the augmentation is more complicated than expected.

Gerald asked the key questions of:

- 1) How is the application processed?
- 2) Does there need to be a change in the law? Is the law written in such a way that we cannot accomplish what we had planned?

The Clark Fork Steering Committee is going to keep an eye on this project to see what can be learned about these two key questions.

Next Meeting:

Agenda:

Some suggested items for the next meeting were:

1. Nevada Creek Dam - funding for some repairs that are needed.
2. Report from Avista and conversation with the Governor.

Next meeting was set for Thursday, November 9, 2000, 9:00 AM - 3:00 PM at St. Mary's Center, Deerlodge.